

Southern Pacific Transportation Company

JOHN J. CORRIGAN
GENERAL SOLICITOR

ARNOLD I. WEBER
JOHN MACDONALD SMITH
RICHARD S. KOPF
SENIOR GENERAL ATTORNEYS

ROBERT S. BOGASON
DOUGLAS E. STEPHENSON
MICHAEL A. SMITH
LOUIS P. WARCHOT
GREG CUNNINGHAM
WILLIAM E. SAUL
GENERAL ATTORNEYS

WRITER'S DIRECT DIAL NUMBER
(415) 541-1752

Southern Pacific Building • One Market Plaza
San Francisco, California 94105
(415) 541-1000

THORMUND A. MILLER
VICE PRESIDENT AND GENERAL COUNSEL

HAROLD S. LENTZ
DAVID W. LONG
CAROL A. HARRIS
STUART E. VAUGHN
CRAIG J. WHITNEY
ANN FINGARETTE HASSE
JOHN K. WYMA
GARY A. LAAKSO
ASSISTANT GENERAL ATTORNEYS

JONATHAN M. FIL
DORENE M. CURTIS
STEPHEN A. ROBERTS
W. GEORGE WAILES
CURT A. SCHULTZ
FRENCE P. RIFF
WAYNE M. BOLIO
CLAUDE F. KOLM
ATTORNEYS

RECORDATION NO. 6050 F
Filed 1425
JUN 13 1984 - 2 15 PM
June 12, 1984

INTERSTATE COMMERCE COMMISSION

4-165A121

Mr. James H. Bayne
Secretary
Interstate Commerce Commission
Twelfth Street & Constitution Avenue, N.W.
Washington, D.C. 20423

RE: Agreement of Conditional Sale dated as of
January 1, 1969, among Southern Pacific
Company, First Pennsylvania Bank, N.A.,
and General Motors Corporation (Electro-
Motive Division) -- Declaration of Full
Payment

Dear Mr. Bayne:

There are enclosed for recording, pursuant to the provisions of Title 49, United States Code, Section 11303, the original and three (3) fully executed counterparts of Declaration of Full Payment dated as of May 15, 1984, between Southern Pacific Transportation Company, as successor by merger to former Southern Pacific Company, and First Pennsylvania Bank, N.A., for the above-entitled Agreement of Conditional Sale and Agreement and Assignment dated as of January 1, 1969, together with voucher in payment of the recording fee.

The following documents have been recorded with the Commission under Section 11303 (former Section 20c) in this matter:

Temporary Agreement of Conditional Sale dated as of January 1, 1969, among Southern Pacific Company, First Pennsylvania Bank, N.A., and General Motors Corporation (Electro-Motive Division), recorded on January 30, 1969, at 11:00 AM, assigned Recordation No. 6050;

Agreement of Conditional Sale dated as of January 1, 1969, recorded on February 5, 1969, at 1:45 PM, assigned Recordation No. 6050-A;

Mr. James H. Bayne
Page Two
June 12, 1984

Agreement and Assignment dated as of November 26, 1969, recorded on December 22, 1969, at 11:05 AM, assigned Recordation No. 6050-B;

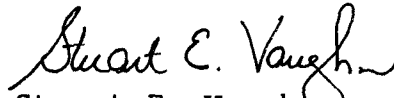
First Supplemental Agreement dated as of February 12, 1982, recorded on March 3, 1982, at 1:25 PM, assigned Recordation No. 6050-C;

Second Supplemental Agreement dated as of November 15, 1983, recorded on December 6, 1983, at 2:40 PM, assigned Recordation No. 6050-D; and

Assignment and Transfer of Certain Road Equipment dated as of November 15, 1983, recorded on January 9, 1984, at 3:00 PM, assigned Recordation No. 6050-E.

When the recording of the Declaration of Full Payment has been completed, will you kindly endorse, with the pertinent recording information, all executed counterparts thereof which are presented to you by our representative herewith, and return three (3) counterparts to her.

Very truly yours,


Stuart E. Vaughn

Enclosures

cc: Mr. D. A. Smith
(Attn: Mr. L. S. Vollmer)
Mr. E. L. Johnson
(Attn: Mr. G. J. Reilly
Mr. S. Jackovich)

6054
RECORDATION NO. _____ Filed & Recorded

JAN 3, 1969 3 05 PM

INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

(Covering 200 Box Cars)

by and between

C.I.T. CORPORATION

and

READING COMPANY

RECEIVED
JAN 3 2 41 PM '69
I.C.C.
FEE OPERATION BR.

Dated as of December 1, 1968

LEASE OF RAILROAD EQUIPMENT, dated as of December 1, 1968, between C. I. T. CORPORATION, a New York corporation (hereinafter called the Lessor) and READING COMPANY, a Pennsylvania corporation (hereinafter called the Lessee).

WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of December 1, 1968 (hereinafter called the Conditional Sale Agreement), with Rydal Equipment Co. (hereinafter referred to as the Manufacturer), wherein the Manufacturer agrees to manufacture, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto; and

WHEREAS, the Manufacturer has assigned its interests in the Conditional Sale Agreement to THE PHILADELPHIA NATIONAL BANK, as Agent (hereinafter referred to as the Vendor); and

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Conditional Sale Agreement on or prior to September 1, 1969 (hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which and on the date or dates on which such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and to

execute and deliver to the Lessor and to the Manufacturer a certificate of acceptance (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. In no event shall the Lessee place any Unit in service or otherwise use any Unit prior to the Lessee's acceptance of delivery of such Unit hereunder.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 30 consecutive semiannual payments, payable on the business day next preceding March 1 and September 1 of each year commencing September 1, 1969. The first such semiannual payment shall be in an amount equal to .01848% of the Purchase Price (as such term is defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under the Conditional Sale Agreement to September 1, 1969; the next nine of which shall each be in an amount equal to 3.327% of the Purchase Price of each Unit subject to this Lease; and the last 20 of which shall each be in an amount equal to 6.10728% of the Purchase Price of each such Unit. If any of the payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day.

All payments provided for in this Lease to be made to the Lessor shall be made to the Lessor in immediately available funds in New York City by depositing such funds to the credit of C. I. T. Corporation, Special Account Number 116-013117, Chemical Bank New York Trust Company, Madison Avenue and 59th Street Branch, New York, New York 10022, or at such other place as the Lessor shall specify in writing.

The Lessor hereby agrees to pay to the Vendor the payments required to be paid by it under Article 3 of the Conditional Sale Agreement subject to the conditions and limitations set forth therein and to apply the "income and proceeds from the Equipment" (as that phrase is defined in the

Conditional Sale Agreement) received by it hereunder toward the satisfaction of its obligations under the Conditional Sale Agreement.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any private person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6 and 9 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder or under any of its obligations under the Conditional Sale Agreement are subject to the rights of the Vendor under the Conditional Sale Agreement. If a Declaration of Default

(as defined in the Conditional Sale Agreement) should be made under the Conditional Sale Agreement and the Lessee shall not promptly fulfill its obligations under Article 6 of the Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein. If such Declaration of Default is due to an event of default not occasioned by an act or omission of the Lessee hereunder or not attributable to the Lessee under the Conditional Sale Agreement, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 18 of the Conditional Sale Agreement, that it will not rescind such Declaration of Default, the Lessee, without penalty under this Lease, may terminate this Lease.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Annex B to the Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

“THE PHILADELPHIA NATIONAL BANK, PHILADELPHIA, PA.,
AGENT—OWNER”,

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and word or words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substi-

tuted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or Canadian (Dominion or Provincial) taxes (other than any federal or Canadian [Dominion or Provincial] income tax [to the extent that the Lessor receives credit therefor against its U. S. federal income tax liability] payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees (and any charges, fines or penalties in connection therewith) (hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by, this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay

on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 10 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations to the Manufacturer and the Vendor pursuant to said Article 10.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interest of the Lessor and the Vendor in such Units or will notify the Lessor and the Vendor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of Lessor, irreparably damaged, from any cause whatsoever or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall within 30 days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor in regard thereto. On the next succeeding rental payment date the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value, as hereinafter defined, of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit. In the event of complete destruction of such Unit, the Lessee shall pay to the Lessor as salvage value an amount based upon the net scrap value of such Unit, computed at the current quoted price per gross ton of number 1 railroad heavy melting steel scrap at Pittsburgh, Pennsylvania, on the date of the Casualty Occurrence, less an allowance of \$4.50 per gross ton for dismantling such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price applicable to such Unit as is set forth in the following schedule opposite the number of such rental payment date.

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	100%	5	100%
2	100	6	100
3	100	7	100
4	100	8	100

Payment No.	Percentage	Payment No.	Percentage
9	100%	20	70%
10	100	21	60
11	100	22	60
12	100	23	50
13	95	24	50
14	90	25	40
15	90	26	40
16	85	27	30
17	80	28	30
18	75	29	20
19	70	30	20

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

§ 7. *Annual Reports.* On or before March 1 in each year commencing with the year 1970, the Lessee will cause to be furnished to the Lessor and the Vendor an accurate statement, as of the preceding January 1, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding twelve months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreement shall have been preserved or replaced. The Lessor shall have the right at its sole cost and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as vendee, under the provisions of Article 15 of the Conditional Sale Agreement and Item 3 of Annex A thereof. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.**

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the Interchange Rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee

agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however*, that the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreement or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition,

possession or storage of any Unit resulting in damage to property or injury to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder or under the Conditional Sale Agree-

ment), unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), and all the obligations of the Lessee under this Lease and under the Conditional Sale Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustee or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Conditional Sale Agreement and this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option, may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee, terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 5.45% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and including, without limitation, (iii) an

amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal to any portion of the investment credit allowed by Section 38 of the Internal Revenue Code of 1954, as amended, lost by the Lessor as a result of the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in their favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its subsidiaries or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Unless the Lessee otherwise consents, from and after any such assignment all rentals and other payments made hereunder shall be paid by the Lessee to the account of the Lessor, care of The Phila-

delphia National Bank (or to any assignee of said Bank made pursuant to Section 6 of the Agreement and Assignment between the Manufacturer, and said Bank, dated as of December 1, 1968, under which the Conditional Sale Agreement is being assigned to said Bank) with instructions to apply all such rentals and other payments forthwith to the satisfaction of the obligations of the Lessor under the Conditional Sale Agreement accrued at the time such payments are due hereunder and any balance shall be paid to the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreement, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them, *except, however*, for any rights in and to the Lessee's interest in this Lease which may accrue to the Manufacturers Hanover Trust Company (hereinafter called the Mortgagee), as successor to the Central Union Trust Company as mortgagee under a Mortgage and Deed of Trust dated January 2, 1924, between the Lessee and the Mortgagee, as amended and supplemented. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units and other than the lien of the said Mortgage and Deed of Trust) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the

Units and to the use thereof upon its lines of railroad or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease the Lessee will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America and that during such term any use of any Unit outside the United States of America will be limited to incidental and temporary use in the Dominion of Canada.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original term of this Lease or any extended term hereof, as the case may be, elect (1) to purchase all but not fewer than all the Units then covered by this Lease at the end of the original term or any extended term hereof for a purchase price equal to the "Fair Market Value" thereof as of the end of such term or (2) to extend the term of this Lease for an additional period of five years in respect of all,

but not fewer than all, of the Units then covered by this Lease at the end of the original term hereof at a rental equal to the "Fair Rental Value" thereof as of the end of such term payable in ten equal semiannual payments.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. Fair Rental Value shall be determined on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's length transaction between an informed and willing lessee-user (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease, and in such determination costs of removal from the location of current use shall not be a deduction from such rental.

If on or before four months prior to the expiration of the original or any extended term hereof, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Rental Value of the Units, such values shall be determined in accordance with the foregoing definition, by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon

both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units Upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease, the Lessee will (unless the Units are sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of any Units (other than any Unit that has been lost, stolen or completely destroyed) to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall there-

upon assume, and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice.

§ 14. *Opinion of Counsel for Lessee.* On each Closing Date (as that term is defined in the Conditional Sale Agreement), the Lessee will deliver to the Lessor counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor and its counsel, to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the Commonwealth of Pennsylvania, with adequate corporate power to enter into this Lease;

B. this Lease has been duly authorized, executed and delivered by the Lessee and constitutes a legal and valid agreement binding upon the Lessee thereto and enforceable against the Lessee in accordance with its terms;

C. this Lease has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other act, filing, recording or deposit (or giving of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor and the Vendor in and to the Units;

D. no approval is required from any public regulatory body with respect to the Lessee's entering into or performance of this Lease;

E. the entering into and performance of this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. neither the lien of the Mortgage and Deed of Trust dated January 2, 1924, referred to in § 11 hereof, nor any other mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 15. *Opinion of Tax Counsel.* On or before the first Closing Date occurring under the Conditional Sale Agreement, the Lessor shall have received counterparts of the written opinion of Messrs. Cravath, Swaine & Moore addressed to the Lessor to the effect that for Federal Income Tax purposes and upon such review as such counsel deem necessary:

A. the Lessor will be considered the owner of the Units;

B. the Lessor will be entitled to investment credit with respect to 100% of the total cost of the Units, subject to the applicable limitations on the amount of such credit contained in Section 46 of the Internal Revenue Code; and

C. the Lessor will be entitled to deductions for depreciation of the Units and the Lessor will be entitled to compute depreciation in accordance with any of the methods enumerated in Section 167(b) of the Internal Revenue Code.

§ 16. *Recording; Expenses.* Prior to the delivery and acceptance of any of the Units, the Lessee will cause this Lease and any assignment hereof to be filed and recorded with the Interstate Commerce Commission in accordance

with Section 20c of the Interstate Commerce Act. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor and its counsel, of the Vendor's and the Lessor's respective interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease and any assignment hereof. The Lessee will promptly furnish to the Vendor and the Lessor evidence of such filing, registering, depositing or recording and of such publication of notice of such deposit.

The Lessee will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each, respectively, bear the fees and disbursements of any counsel which it may respectively retain.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to ^{*}8¾% per annum of the overdue rentals for the period of time during which they are overdue.

* changed
to 9%

§ 18. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, 650 Madison Avenue, New York, N. Y. 10022;

if to the Lessee, Office of Secretary, Reading Terminal, 12th and Market Streets, Philadelphia, Pennsylvania 19107;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessors and the Lessee.

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and in each case such counterparts together shall constitute but one and the same instrument.

Although this Lease is dated as of December 1, 1968, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* This Lease shall be construed in accordance with the laws of New York.

IN WITNESS WHEREOF, the Lessor and the Lessee, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals

to be hereunto affixed and duly attested, as of the date first above written.

C. I. T. CORPORATION,

by

[Signature]
Vice President.

[CORPORATE SEAL]

Attest:

[Signature]
Secretary.

APPROVED
AS TO FORM

READING COMPANY,

by

[Signature]

Vice President.

[CORPORATE SEAL]

Attest:

[Signature]
Secretary.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

On this ²⁷ day of December, 1968, before me personally appeared C. J. Crump, to me personally known, who, being by me duly sworn, says that he is a Vice President of C. I. T. CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Alma Stern
.....

Notary Public

[NOTARIAL SEAL]

My Commission expires

ALMA STERN
Notary Public, New York
Qualified in New York No. 24-8911600
Term Expires March 30, 1970

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF PHILADELPHIA, } ss.:

On this ^{31st} day of December, 1968, before me personally appeared J. Richard Tomlinson, to me personally known, who, being by me duly sworn, says that he is a Vice President of READING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Arthur H. Williams
.....

Notary Public

[NOTARIAL SEAL]

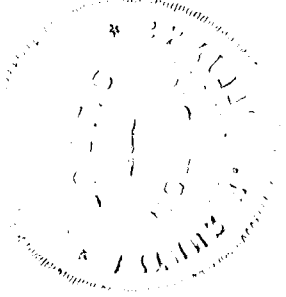
My Commission expires

Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 17, 1970



SCHEDULE A

<u>Type</u>	<u>Manufacturer's Specifications</u>	<u>Location of Plant</u>	<u>Quantity</u>	<u>Road Numbers (inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Delivery</u>	
50' 9" 70-ton box cars with four belt DF-2 equipment	October 17, 1968	Reading, Pa.	100	18400- 18499, inclusive	\$16,550	\$1,655,000	December, 1968- March, 1969	
50' 9" 70-ton box cars with nine belt DF-2 equipment	October 17, 1968	Reading, Pa.	50	18500- 18549, inclusive	17,550	877,500	December, 1968- March, 1969	
50' 9" 70-ton box cars with DF bulkheads	October 17, 1968	Reading, Pa.	50	18550- 18599, inclusive	17,550	877,500	December, 1968- March, 1969	52



8269

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976,
12:01 a.m., the Financing Agreement described below has
been assigned to the Consolidated Rail Corporation by the
Trustees of: Reading Company
1 Plymouth Meeting
Plymouth Meeting, PA 19452

The Financing Agreement is a Lease
dated December 1, 1968,
bearing the ICC recordation number 6054.
The payee's name and address is: C.I.T. Corporation
Special Acct. No. 116-013117
Chemical Bank New York Trust Company
Madison Ave. and 59th Street Branch
New York, NY 10022

This Notice of Assignment has been placed in the
file of the ICC recordation number listed above and the entire
assignment is contained in the ICC recordation file stamped
in the margin of this assignment. A copy hereof will be
promptly mailed to the payee listed above for distribution
to the beneficial holder(s) of the Financing Agreement described
in this Notice of Assignment.

Consolidated Rail Corporation